

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION No. 85 of 2019 (DB)

Sunil Mahadeorao Gaidhani,
Aged about 35 years,
Occ. Service r/o 149, Jaywant Nagar,
Rameshwari Ring Road, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Agriculture
Mantralaya, Mumbai-400 032.
- 2) The Divisional Joint Director of Agriculture,
Administrative Building No.2, Civil Lines,
Nagpur-440 001.
- 3) The District Superintending Agriculture Officer,
Kadimbagh, Civil Lines, Nagpur-440 001.
- 4) The District Superintending Agriculture Officer,
Karla Road, Wardha.
- 5) Taluka Agriculture Office,
Maharaj Bagh Premises,
Nagpur.

Respondents.

**S/Shri P.D. Meghe, A. Singh, S. Kumbhekar, Advs. for the
applicant.**

Shri H.K. Pande, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 102 of 2019 (DB)

Ku. Urmila D/o Shalikram Naik,
Aged about 40 years,
R/o Vihirgaon Ward, Mul,
Dist. Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Agriculture
Mantralaya, Mumbai-400 032.
- 2) The Divisional Joint Director of Agriculture,
Administrative Building No.2, Civil Lines,
Nagpur-440 001.
- 3) The District Superintending Agriculture Officer,
Complex Area, Chandrapur Road,
Opp. Police HQ, Gadchiroli.
- 4) The District Superintending Agriculture Officer,
Krushi Bhawan, Opp. Traffic Control Branch,
Tukum Road, Chandrapur.
- 5) Taluka Agriculture Officer,
Near Nagar Parishad Office,
Mul, Dist. Chandrapur.

Respondents.

**S/Shri P.D. Meghe, A. Singh, A. Lanjewar, S. Kumbhekar, Advs.
for the applicant.**

Shri H.K. Pande, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 103 of 2019 (DB)

Shri Samadhan Dayanaji Wankhede,
Aged about 40 years, Occ. Service,
R/o Mahatma Fule Nagar, Ward No.4,
Saoner, Dist. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Agriculture
Mantralaya, Mumbai-400 032.
- 2) The Divisional Joint Director of Agriculture,
Administrative Building No.2, Civil Lines,
Nagpur-440 001.
- 3) The District Superintending Agriculture Officer,
Kadimbagh, Civil Lines, Nagpur-440 001.
- 4) Taluka Agriculture Officer,
Saoner, Dist. Nagpur.

Respondents.

**S/Shri P.D. Meghe, A. Singh, A. Lanjewar, S. Kumbhekar, Advs.
for the applicant.**

Shri A.P. Potnis, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 104 of 2019 (DB)

Bhushan S/o Kamalkumar Bhirad,
Aged about 36 years, Occ. Service,
R/o Bhadrawati, Dist. Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Agriculture
Mantralaya, Mumbai-400 032.
- 2) The Divisional Joint Director of Agriculture,
Administrative Building No.2, Civil Lines,
Nagpur-440 001.
- 3) The District Superintending Agriculture Officer,
Krushi Bhawan, Opp. Traffic Control Branch,
Tukum Road, Chandrapur.
- 4) Taluka Agriculture Officer,
Bhadrawati, Dist. Chandrapur.

Respondents.

**S/Shri P.D. Meghe, A. Singh, A. Lanjewar, S. Kumbhekar, Advs.
for the applicant.**

Shri S.A. Sainis, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 105 of 2019 (DB)

Yograj S/o Devidas Meshram,
Aged about 37 years, Occ. Service,
R/o Gondpipri, Dist. Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Department of Agriculture
Mantralaya, Mumbai-32.
- 2) Divisional Joint Director of Agriculture,
Administrative Building No.2, Civil Lines,
Nagpur-440 001.
- 3) District Superintending Agriculture Officer,
Chandrapur.
- 4) Taluka Agriculture Officer,
Gondpipri, Dist. Chandrapur.

Respondents.

**S/Shri P.D. Meghe, A. Singh, A. Lanjewar ,S. Kumbhekar, Advs.
for the applicant.**

Shri V.A. Kulkarni, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 106 of 2019 (DB)

Subhash S/o Istaru Bawankar,
Aged about 41 years, Occ. Service,
R/o Tiroda, Dist. Gondia.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Department of Agriculture
Mantralaya, Mumbai-32.
- 2) Divisional Joint Director of Agriculture,
Administrative Building No.2, Civil Lines,
Nagpur-440 001.
- 3) District Superintending Agriculture Officer,
Chandrapur.
- 4) Taluka Agriculture Officer,
Tiroda, Dist. Gondia.

Respondents.

**S/Shri P.D. Meghe, A. Singh, A. Lanjewar ,S. Kumbhekar, Advs.
for the applicant.**

Shri A.M. Khadatkar, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 107 of 2019 (DB)

Ashwaghosh S/o Dudhram Ramteke,
Aged about 42 years, Occ. Service,
R/o Sawli, Dist. Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Department of Agriculture
Mantralaya, Mumbai-32.
- 2) Divisional Joint Director of Agriculture,
Administrative Building No.2, Civil Lines,
Nagpur-440 001.
- 3) District Superintending Agriculture Officer,
Chandrapur.
- 4) Taluka Agriculture Officer,
Sawli, Dist. Chandrapur.

Respondents.

**S/Shri P.D. Meghe, A. Singh, A. Lanjewar ,S. Kumbhekar, Advs.
for the applicant.**

Shri M.I. Khan, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 108 of 2019 (DB)

Yogesh S/o Keshavrao Madankar,
Aged about 33 years, Occ. Service,
r/o Sawargaon, Tq. Narkhed,
Dist. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Agriculture
Mantralaya, Mumbai-400 032.
- 2) The Divisional Joint Director of Agriculture,
Administrative Building No.2, Civil Lines,
Nagpur-440 001.
- 3) The District Superintending Agriculture Officer,
Kadimbagh, Civil Lines, Nagpur-440 001.
- 4) Taluka Agriculture Office,
Narkhed, Dist. Nagpur.

Respondents.

**S/Shri P.D. Meghe, A. Singh, A. Lanjewar, S. Kumbhekar, Advs.
for the applicant.**

Shri S.A. Deo, C.P.O. for the respondents.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri Anand Karanjkar, Member (J).**

COMMON JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 7th day of March,2019)

Heard Shri P.D. Meghe, learned counsel for the applicants and Shri H.K. Pande, learned P.O. and other learned CPO/ P.Os. for the respondents.

2. The substantial issues involved in these applications are:-

(1) Whether the applicants were eligible for the promotion on the post of Agricultural Assistants?

(2) Whether the order passed by the respondent No.2 is illegal because opportunity of hearing was not given to them?

3. As the issues involved in all application are the same, therefore, these applications are decided by this common judgment.

4. All the applicants were appointed in service as Nursery Assistance, all of them have completed service more than 5 years, therefore, they were promoted as Agriculture Assistants by the respondent No.2 vide order dt/25-6-2018. It is contention of the applicant that the respondent No.2 vide order 24-1-2019, all of a sudden reverted the applicants to the post of Nursery Assistant. The reversion order and relieving orders were served on the applicants on 31-1-2019, by the respondent No.5. This action of the respondents is challenged by the applicants on the ground that the impugned orders are passed by the respondent No.2 without giving the applicants

opportunity of hearing. It is submitted that all applicants had completed service as Nursery Assistants and as per the criteria they were eligible for the promotion. It is contended that when the applicants were appointed in service they were holding Diploma Certificates issued by Dr. Punjabrao Deshmukh Krishi Vidhyapeeth Akola in Nursery, therefore, they were appointed. According to the applicants as per service Rules the eligibility for promotion on the post of Agriculture Assistant was 5 years service and the applicants had completed this requirement, but the respondent No.5 without considering this fact without hearing the applicants came to the erroneous conclusion that the applicants were not eligible for the promotion and passed the orders of reversion. It is submitted that it was obligation on the respondent No.5 to issue show cause notice to the applicants and give them opportunity of hearing, but this principle was not followed therefore, the order of reversion are perse illegal and be set aside.

5. The respondent No.2 has filed reply and justified the reversion orders on the ground that as per the Rules framed by the Government on 29-1-2018, the eligibility for the promotion of Nursery Assistant on the post of Agriculture Assistant was 5 years service as Nursery Assistant and Diploma in Agriculture subject or equivalent qualification as recognized by the Government. It is contention of the

respondents that the applicants in O.A. No.85/2019, 102 to 107/2019 were possessing only certificate as they had completed one year course, these applicant were not holding Diploma. It is submitted that as the applicants were not holding Diploma, therefore, their promotions were illegal and consequently the respondent No.2 reverted them. The respondent No.2 has justified his action for the reason that the promotions of the applicants were not irregular, but illegal. It is contended that as the applicants were not eligible for the promotion, therefore, there was no reason for giving opportunity of hearing to the applicants, it was of no use. It is submitted by the respondents that there is no substance in O.A. No. 85/2019, 102 to 107/2019 and these application be dismissed with costs. So far as O.A. No.108/2019 is concerned the respondents have avoided to file reply in this application.

6. We have heard the learned counsel for the applicants and learned P.O. We have perused the orders of promotions and reversion, there is no dispute about the fact all the applicants had completed service more than 5 years at the time of promotion. The applicants have filed Government Notification dt/29-Jan 2018, vide this notification the Government of Maharashtra framed the recruitment Rules for filling the posts of Agriculture Assistants (Group C) and brought the Rules in force with effect from the date of its

publication in the official Gazette. The Government of Maharashtra by the same Notification directed that, the earlier Rules were superseded by the new Rules.

7. The Rule No.3(1) says that the Nursery Assistant (Group D) who has completed service not less than 5 years as such and if holding qualification as mentioned in clause "Kh" (2), shall be eligible for nomination on the post of Agriculture Assistant. Rule 3 (3) clause "Kh" (2) says that the candidate shall hold Diploma or any other educational qualification recognized by the Government equivalent to Diploma. After reading Rule 3 (1) and clause "Kh" it is not possible to accept submission of the applicants that only 5 years service as Nursery Assistant was the eligibility for the promotion.

8. The respondents have specifically contended that all applicants (except the applicant in O.A. No. 108/2019) were not holding Diploma as required by Rule 3 clause "Kh" (2), it is submitted that these applicants have completed one year certificate course, it was not equivalent to Diploma, therefore, they were not eligible for the promotion. We have gone through the reply submitted by the respondent No.2, it is pertinent to note that the applicants were aware of the contentions raised by the respondent No.2, but they avoided to produce their Diploma before this Bench, therefore, adverse

inference can be drawn that as the applicants are not holding Diploma, therefore, they have not produce the same.

9. The applicants are submitting that the action of the respondent No. 2 reverting the applicant without giving them opportunity of hearing is contrary to principles of natural justice, the applicant have placed reliance on the judgments in case of M.M.Agraval v State of Gujrat adn another 2007 LAB. I.C. 907 Gujrat H.C., Sh. Devander Prasad Verma and another v Union of India 2003 LAB. I.C. 519, V. Usha v The Director of Town Panchayat (Madras) 2008(1) MLJ 182, Tikam Ram v Ranchi University (Jharkhand) 2001 (1) JLJR 296, G.Subrahmanyam v The Executive Officer, Tirumala Tirupati Devasthanam and another 2006 LAB. I.C. 1721 and judgment in W.P. No.3946/ 2017 State of Maharashtra v Water Resources Department and others decided on 31-1-2018.

10. We have gone through the judgment in case of M.S. Usmani v Union of India 1995 S.C.C. (L&S) 447, the issue involved in that case was the person was promoted to the post of Station Master and further on the post of T I after competitive test, there was reversion after 8 years on the ground of restructuring of the cadets, therefore, it held bad in law. This case is not applicable to the case of the applicants, the applicants were not holding the educational qualification which was must. The learned P.O. has placed reliance

on the judgment in case of State of Orissa v Mamta Mohanty Civil Appeal No.1272/2011 decided on 9th Feb. 2011 by Hon'ble Apex Court. In para 22 of the judgment following observations are made-

“In Pramod Kumar v U.P. Secondary Education Services Commission & ors. A.I.R. 2008 S.C. 1817, this court examined the issue as to whether a person lacking eligibility can be appointed and if so, whether such irregularity / illegality can be cured/condoned. After considering the provisions of U.P. Secondary Services Commission Rules, 1983 and U.P. Intermediate Education Act 1921, this court came to a conclusion that lacking eligibility as per the rules/advertisement cannot be cured at any stage and making appointment of such a person tantamount to an illegality and not an irregularity, thus cannot be cured. A person lacking the eligibility cannot approach the court for the reason that he does not have a right which can be enforced through court”.

11. This court further held as under:-

“If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law.”

12. In view of this legal position, as the applicants (except the applicant in O.A.No.108/2019) were not holding Diploma which was must, therefore, their promotions were void, so the same cannot be cured/ ratified.

13. Now only question remains, whether it was mandatory to hear the applicants before passing the impugned orders of reversions. The same question is examined by Hon'ble larger Bench of Apex Court, in case of Union of India v Raghuwar Pal Singh Civil Appeal No.1636 of 2012 decided on 13 Mar. 2018. The relevant observations made by the Hon'ble Apex Court in para 22 are as under:-

“28. We have no hesitation in concluding that in the fact situation of the present case, giving opportunity of hearing to the respondent before issuance of the subject office order was not an essential requirement and it would be an exercise in futility. For the view that we have taken, the exposition in D.K. Yadav (supra), which commended to the High Court, in our opinion, has no application to the fact situation of the present case concerning an appointment which is void ab initio and nullity.”

14. In case of Union of India v Raghuwar Pal Singh Civil Appeal No.1636 of 2012 decided on 13 Mar. 2018, it was held by CAT that the appointment was illegal and observed that as per the legal position if any appointment is made de hors the statutory rules such appointment is illegal and who came by the back door shall go back by the same door. This order passed by the CAT was set aside by the High Court and after examining the legal position it was held by the Hon'ble Apex Court that if the appointment is illegal, then giving opportunity of hearing to such person was futile. In view of the law

laid down by the Larger Bench of the Hon'ble Apex Court we hold that as the promotions of the applicants (except the applicant In O.A.No.108/2019) were illegal, therefore, the reversion orders cannot be set aside on the ground that opportunity of hearing was not given to them. In our view if in such situation if the impugned orders of reversion are set aside only for giving opportunity of hearing, then it would be continuing the illegality after noticing the law laid down by the Hon'ble Larger Bench of the Apex Court.

15. We have examined the O.A. No.108/2019, the applicant in this case was holding Diploma awarded by Yashwantrao Chavan Maharashtra Open University Nashik in Floriculture and Landscaping Gardening. In O.A. No.85/2019 the respondent No.2 has filed Anx. 2, G.R. dt/ 27-3-2002, vide this G.R. the Government of Maharashtra decided to recognize the certificate course of one year and diploma course of two years in Yashwantrao Chavan Maharashtra Open University as equivalent to such courses in Agriculture Universities in the state of Maharashtra. Thus the action of the respondent No.2 reverting this applicant is illegal and it cannot be sustained. In result we pass the following order :-

ORDER

(i)The O.A.No.85/2019,102/2019,103/2019,104,2019,105/2019, 106/2019 and 107/2019 stand dismissed. No order as to cost.

(ii) The O.A. No.108/2019 is allowed. The order of reversion dated 24-1-2019 is set aside. The applicant be reinstated on the post of Agriculture Assistant at Narkhed or at any place if the post at Narkhed is not vacant. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 07/03/2019.

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